

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 32.1 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: "(SUMMARY ORDER)." A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED ON ANY PARTY NOT REPRESENTED BY COUNSEL UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT [HTTP://WWW.CA2.USCOURTS.GOV/](http://www.ca2.uscourts.gov/)). IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

At a stated term of the United States Court of Appeals
for the Second Circuit, held at the Daniel Patrick Moynihan
United States Courthouse, 500 Pearl Street, in the City of
New York, on the 20th day of June, two thousand eight.

PRESENT:

HON. WILFRED FEINBERG,
HON. JOSÉ A. CABRANES,
HON. ROBERT D. SACK,

Circuit Judges.

ZENG MU LI,
Petitioner,

v.

UNITED STATES DEPARTMENT OF JUSTICE,
MICHAEL B. MUKASEY, ATTORNEY GENERAL,¹
Respondents.

07-4549-ag
NAC

¹ Pursuant to Federal Rule of Appellate Procedure 43(c)(2), Attorney General Michael B. Mukasey is automatically substituted for former Acting Attorney General Peter D. Keisler as a respondent in this case.

1 **FOR PETITIONER:** **Bruno Joseph Bembi, Hempstead, New**
2 **York.**

3
4 **FOR RESPONDENTS:** **Jeffrey S. Bucholtz, Acting**
5 **Assistant Attorney General,**
6 **Christopher C. Fuller, Senior**
7 **Litigation Counsel, Ann Carroll**
8 **Varnon, Attorney, Office of**
9 **Immigration Litigation, U.S.**
10 **Department of Justice, Washington,**
11 **D.C.**

12
13 UPON DUE CONSIDERATION of this petition for review of a
14 decision of the Board of Immigration Appeals ("BIA"), it is
15 hereby ORDERED, ADJUDGED, AND DECREED, that the petition for
16 review is DENIED.

17 Petitioner Zeng Mu Li, a native and citizen of the
18 People's Republic of China, seeks review of an October 2,
19 2007 order of the BIA affirming the March 19, 2001 decision
20 of Immigration Judge ("IJ") Patricia A. Rohan denying
21 petitioner's application for asylum, withholding of removal,
22 and relief under the Convention Against Torture ("CAT"). *In*
23 *re Zeng Mu Li*, No. A78 125 640 (B.I.A. Oct. 2, 2007), *aff'g*
24 No. A78 125 640 (Immig. Ct. N.Y. City, Mar. 19, 2001). We
25 assume the parties' familiarity with the underlying facts
26 and procedural history of the case.

27 As a preliminary matter, because Li has failed to
28 sufficiently challenge the agency's denial of CAT relief

1 before this Court, and because addressing this argument does
2 not appear to be necessary to avoid manifest injustice, we
3 deem any such argument waived. See *Yueqing Zhang v.*
4 *Gonzales*, 426 F.3d 540, 541 n.1, 545 n.7 (2d Cir. 2005).

5 When the BIA affirms the decision of the IJ and
6 supplements the IJ's decision, we review the decision of the
7 IJ as supplemented by the BIA. See *Yan Chen v. Gonzales*,
8 417 F.3d 268, 271 (2d Cir. 2005). We review *de novo*
9 questions of law and the application of law to undisputed
10 fact. See, e.g., *Secaida-Rosales v. INS*, 331 F.3d 297, 307
11 (2d Cir. 2003). We review the agency's factual findings
12 under the substantial evidence standard, overturning them
13 only if any reasonable adjudicator would be compelled to
14 conclude to the contrary. See 8 U.S.C. § 1252(b)(4)(B); see
15 also *Manzur v. U.S. Dep't of Homeland Sec.*, 494 F.3d 281,
16 289 (2d Cir. 2007).

17 We find no error in the agency's determination that Li
18 failed to meet his burden of proof for asylum, withholding
19 of removal, or CAT relief. The BIA correctly determined
20 that Li's wife's forced sterilization does not constitute
21 past persecution as to Li. As we have held, "the statutory
22 scheme unambiguously dictates that applicants can become

1 candidates for asylum relief only based on persecution that
2 they themselves have suffered or must suffer." *Shi Liang*
3 *Lin v. U.S. Dep't of Justice*, 494 F.3d 296, 309 (2d Cir.
4 2007) (en banc). Accordingly, to the extent it is based on
5 his wife's forced sterilization, Li's petition for review
6 "is doomed."² See *Shu Wen Sun v. BIA*, 510 F.3d 377, 381 (2d
7 Cir. 2007); *Gui Yin Liu v. INS*, 508 F.3d 716, 723 (2d Cir.
8 2007).

9 Moreover, the IJ properly determined that Li "has not
10 established past persecution or a well-founded fear of
11 persecution because of . . . the events that transpired in
12 connection with the enforcement of the Family Planning
13 Policies at that time."³ Li argues that he is eligible for
14 asylum because he resisted China's family planning policy by
15 having two children in violation of the one-child policy, by
16 helping his wife hide at a relative's house when she became
17 pregnant with his second child, and by escaping detention

² To the extent Li argues that his wife may have been sterilized due to his other resistance to China's coercive population control program, that argument is merely an attempt to recast his claim that he was persecuted by virtue of the persecution of his wife. That claim is foreclosed by *Shi Liang Linice*, 494 F.3d 296, 309. See also *Tao Jiang v. Gonzales*, 500 F.3d 137, 141 (2d Cir. 2007).

³ We are unpersuaded by Li's argument that the agency failed to consider his other resistance claim. While the IJ did not explicitly find that Li did not engage in "other resistance to a coercive population control program," 8 U.S.C. § 1101(a)(42)(B), we conclude that the IJ's finding is broad enough to encompass Li's other resistance claim.

1 after being detained for a week.

2 Contrary to Li's arguments, there is no evidence in the
3 record to demonstrate that he "resisted" China's family
4 planning policy within the meaning of the Immigration and
5 Nationality Act. See 8 U.S.C. § 1101(a)(42)(B). Li does
6 not challenge the agency's definition of the term
7 "resistance." The BIA has described resistance as covering
8 "a wide range of circumstances, including expressions of
9 general opposition, attempts to interfere with enforcement
10 of government policy in particular cases, and other overt
11 forms of resistance to the requirements of the family
12 planning law". *Matter of S-L-L-*, 24 I. & N. Dec. 1 (BIA
13 2006); see also *Shi Liang Lin*, 494 F.3d at 313. Li's
14 conduct does not reflect such resistance. After Li's wife
15 gave birth to her first child, he testified that he made
16 "excuses" in order to avoid her having an IUD inserted.
17 However, when officials attempted to have Li's wife
18 sterilized after she had her second child, Li "begged" them
19 to issue a marriage certificate retroactively in exchange
20 for the sterilization of his wife. He stated, "I said if I
21 agree to let my wife to be sterilized, you have to issue our
22 marriage certificate retroactively and also allow my

1 children to be registered in school, and also in the
2 household registration book." Such conduct is certainly far
3 from resistance. See *id.*

4 Additionally, when family planning officials detained
5 him because his wife was in hiding, he managed to escape
6 after a week. This escape is not "overt" resistance to a
7 family planning policy. See *Matter of S-L-L-*, 24 I. & N.
8 Dec. 1, 10 (BIA 2006).

9 For the foregoing reasons, the petition for review is
10 DENIED.

11 FOR THE COURT:
12 Catherine O'Hagan Wolfe, Clerk
13
14

15 By: _____